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October 29, 1997

MUR 4687

Lawrence Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20468

Re: Complaint Against George Voinovich

Dear Mr. Noble:

The undersigned requests that the Commission institute an immediate investigation into certain "soft money" contributions made to support the United States Senate candidacy of Ohio Governor George Voinovich. Those contributions result from advertising campaigns financed exclusively with "soft money," featuring Mr. Voinovich. The ads portray Mr. Voinovich in a positive light, using as a vehicle a pending ballot question on workers compensation. They have run, moreover, exclusively within the State of Ohio and have been viewed therefore exclusively by voters now determining whether to support Mr. Voinovich in the November 1998 general election.

The context in which Mr. Voinovich appears -- a fully electoral context -- is plain. Mr. Voinovich has already raised \$2.3 million towards his Senate candidacy. For purposes of the federal campaign laws he is now a candidate for the United States Senate. The election is expected to be competitive and also expensive.

In these circumstances, Mr. Voinovich and his organization have devised a plan to attract soft money to his personal political cause. He appears in advertisements on a public policy issue paid for by a private group. The advertisements do not simply make passing mention of Voinovich, but place him at

[04005-0001/DA972960.010]

the center. The texts are attached as Exhibits A and B. He is the only individual named in the advertisements and who appears in these advertisements. In one of the ads, he is the whole show, speaking to the camera for the entire length of the ad. A visual with a campaign button imprinted with the word "YES" is visible next to him. In the other, he appears for a period of several seconds, alongside the word "YES" immediately next to his image.

The FEC has addressed other circumstances where a candidate appears before his or her electorate in advertisements or immediate appearances paid by third parties. Its decisions have properly focused on the facts of particular advertisements -- the text of the ads, the timing of the appearances and other circumstances bearing on the question of whether there is in fact an election-related purpose.

Advisory Opinion 1977-31 presents the most analogous fact pattern in which the Federal Election Commission announced that public service messages featuring a prospective candidate, who had not yet announced his candidacy, are considered illegal "in-kind" contributions from the corporation paying for the advertisements. The ads discussed in this opinion were 60-second radio spots read by the prospective candidate which did not expressly advocate the election or defeat of a specified candidate. Rather, the messages presented political opinions on a wide range of topics. The prospective candidate read the advertisements and mentioned his own name twice. These ads were intended to be aired in and around the prospective candidate's Congressional district.

The FEC found that the mere recitation of the prospective candidate's name twice in the body of the public service messages provided value to him as a candidate. In addition, although the prospective candidate had not yet announced his candidacy, the FEC noted that he was a "candidate" within the meaning of 2 U.S.C. §431(b)(2) since he had authorized a political committee to collect contributions and make expenditures on his behalf. Thus, the sponsoring and paying for these ads would constitute an illegal "in-kind" contribution from a corporation.

Surely, the image of a prospective candidate, who has already collected \$2 million in campaign contributions, next to the word "YES" in large block letters is valuable to that candidate's campaign. Under the FEC's reasoning in AO 1977-31, the advertisements featuring Ohio Governor George Voinovich warrant immediate investigation.

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Similarly, Advisory Opinion 1977-54 involved expenses paid by a statewide bipartisan drive opposing ratification of the Panama Canal Treaty in connection with speaking engagements featuring then-candidate Newt Gingrich. The petition drive was careful to minimize Mr. Gingrich's petition efforts in his own Congressional district and had deliberately focused his efforts on efforts outside the Sixth District. It was crucial to the Commission's opinion that Mr. Gingrich's efforts with the petition drive avoided Mr. Gingrich's congressional district and could not therefore influence the outcome of its election campaign.

More recently, in Advisory Opinion 1992-37, the FEC concluded that a candidate may participate in a Congressional campaign contemporaneously with his position as a radio talk show host, as long as he avoided express advocacy of any candidate's election or defeat while working on the radio. Central to the FEC's reasoning was the fact that the radio show was not broadcast in the candidate's Congressional district. Indeed the opinion noted that "the [radio] signal [was] almost extinct" in the candidate's district. Thus, the candidate was able to continue working as a radio talk show host without violating FEC regulations.

The advertisements being run on behalf of Mr. Voinovich require similar analysis under the Act's standards. This analysis compels the conclusion that these were designed to influence his election. It is undisputed that --

- Mr. Voinovich is a candidate;
- The election in which he is a candidate will be competitive and expensive;
- The advertisements have been aired in the State of Ohio, directly to the electorate who will decide whether to vote for Mr. Voinovich;
- The advertisements are organized around Mr. Voinovich's appearance in the ad;
- The advertisements include text favorable to Voinovich to accompany the mention of his name and his image, and one of the ads consists entirely of him speaking to the camera -- and to the voters of Ohio.


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Doubtless Mr. Voinovich and his supporters will contend that the advertisements have been fashioned without regard to his candidacy. This is a question of fact, one the Commission can address and resolve only by investigation. Did Mr. Voinovich and his advisors discuss the value to his campaign of appearance in these advertisements? Was this campaign benefit promoted to the Governor by the group sponsoring the advertisements as an inducement to him to participate? Did any of the operatives connected to his political campaign review the text of the advertisements or edit them -- or for that matter draft them altogether? Has the Governor's campaign polled on this particular issue? Or might the advertisements have been designed around survey research results indicating that Mr. Voinovich's candidacy would be boosted by associating himself actively on the airwaves with his cause? Does his campaign organization have in its possession any documents relating to this advertising campaign, which would indicate campaign involvement in its planning?

All of these are appropriate questions for the Commission to raise through an investigation made meaningful by the agency's power to collect testimony under oath. In this time of concern over the influx of soft money to the political process, the agency cannot sidestep ruses by which this prohibited money is used in defiance of our campaign finance laws. Mr. Voinovich and his campaign team are committed to winning this election by commanding all possible resources. The Commission should take immediate action to assure that the Ohio Senate election is not further affected by improper and illegal practices involving "soft money."

Respectfully submitted,



Robert F. Bauer
General Counsel,
Democratic Senatorial
Campaign Committee
430 South Capitol Street, S.E.
Washington, DC 20003
(202) 224-2447

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STATE OF District of)
County of Columbia)

SUBSCRIBED AND SWORN to before me this 29 day of October, 1997.

Marcy B. Ingle
Notary Public

My Commission Expires:

My commission expires on September 14, 2000

COLUMBUS DISPATCH
COLUMBUS, OH.
PM CIRC. 299,881.

116

OCT-9-97

Campaign ad watch

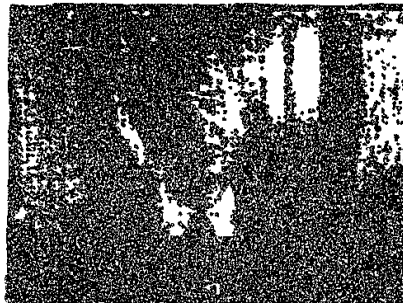
■ **CAMPAIGN:** Keep Ohio Working. Yes on Issue 2

■ **PRODUCER:** Wilson/Grand Communications

■ **AD TEXT:** Vote yes on Issue 2. Issue 2 stops cheaters who fake injuries, punishes businesses that don't pay and limits lawyers who made \$200 million off injured workers last year alone. Workers' comp is broken. Voting yes on Issue 2 will fix it. That's why there's so much support to vote yes on Issue 2. Ohio's leading newspapers. Ohio's doctors. The Ohio Farm Bureau. Ohio's manufacturers. The Ohio Chamber. Ohio's small businesses. And Gov. George V. Voinovich.

■ **ANALYSIS:** This is Voinovich's first appearance in a pro-Issue 2 ad, although he's been beating the drum relentlessly otherwise. The ad

Source: Keep Ohio Working TV ad



Gov. George Voinovich supports Issue 2

pieces together images from three previous Issue 2 ads, as well as other campaigns handled by the Washington-based media consultant. The familiar red-flag images are here — the fraudulent workers' comp recipient riding an ATV; lawyers poking business cards at an injured worker. As a backdrop, a list of organizations endorsing the issue scrolls seemingly endlessly.

Dispatch graphics

EXHIBIT A

99.04.291.0229

ISSUE 2 AD (10/27/97)

(Visual: Voinovich standing in office in front of American flag, book shelf and desk chair. Chyron: Gov. George Voinovich)

(Audio: Voinovich speaking)

The Plain Dealer said the opponents of Issue 2 would use scare tactics. (Holds up a Plain Dealer. Chyron: "Scare tactics"--The Plain Dealer) Have they ever!

Here's what issue 2 really does: Voting yes on Issue 2 helps injured workers. (Chyron: Issue 2 Helps Injured Workers)

Medical and lost time benefits are not cut as the lawyers would have you believe. (Chyron: Medical Benefits are NOT Cut--Senate Bill 45, 4/22/97)

Full benefits will be paid faster. (Chyron: Benefits Paid Faster--S.B. 45, 4123.56(B)(1))

Carpal tunnel is still covered (Chyron: Carpal Tunnel IS Covered--S.B. 45, 4123.01(F))

And you keep the choice of doctors that take care of you. (Visuals: Two doctors looking at X-rays. Chyron: Keep Choice of Doctors--Ohio Administrative Code 4123.6.062)

(Visual: Voinovich in office. Blue campaign button appears on screen next to Voinovich, reading Vote YES on issue 2)

So let's take the money from the Workers' Comp lawyers and put it in the pockets of the injured workers where it belongs. Fix Workers' Comp. Vote yes on Issue 2.

(Disclaimer: Paid for by Keep Ohio Working, Roger R. Geiger, Treas., 236 E. Town St., Suite 110, Columbus, Ohio 43215)

EXHIBIT B